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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO CREATE A JUVENILE
MECHANICAL RESTRAINTS RULE,
ARIZONA RULES OF PROCEDURE
FOR THE JUVENILE COURT

Supreme Court No. R-15-

**PETITION TO CREATE A JUVENILE
MECHANICAL RESTRAINTS RULE,
ARIZONA RULES OF PROCEDURE FOR
THE JUVENILE COURT**

Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Arizona Public Defender Association (“APDA”) petitions this Court to create a juvenile rule regarding mechanical restraints, **Arizona Rules of Procedure for the Juvenile Court**, to address the use of mechanical restraints on juveniles being transported from the juvenile detention center and during court hearings in Superior Court, Juvenile Division. (*See* Appendices.) The basis for the Petition is set forth below.

APDA is an Arizona non-profit corporation comprised of public defense offices and programs throughout the State of Arizona. The primary purposes of the organization include improving the quality of legal representation of indigent people who face the loss of liberty or the right to parent, and ensuring a just legal system.

1 APDA's offices defend the overwhelming majority of children who are involved in a
2 Title 8 delinquency.

3 **Background and Purposed Rule**

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5 In Arizona, the use of mechanical restraints on children being transported from
6 detention to Superior Court, and while appearing in Superior Court, Juvenile Division,
7 varies from county to county. Several counties have ceased using mechanical restraints
8 on youth appearing before the court on delinquency matters. Pima County, Yuma
9 County, and Santa Cruz County have terminated the use of restraints while the child is
10 in court. Maricopa County, Pinal County, Gila County and Cochise County are in the
11 process of revising their policies. As many of the counties consider revising their
12 policies regarding the use of handcuffs, leg irons and belly chains for children appearing
13 in court, now is an appropriate time for the adoption of a court rule to address the issue.
14 Whether a child is placed in mechanical restraints should not depend on which county
15 the juvenile has a court hearing in.

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18 Currently many children are mechanically restrained during transportation to the
19 court proceeding and throughout the duration of the court proceeding, without a
20 determination that the child is currently a danger to others or a flight risk. Despite the
21 mounting evidence that mechanical restraints cause psychological harm and additional
22 trauma, children remain indiscriminately restrained.

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25 Children who are currently detained in a juvenile detention center are bound at
26 the wrists and ankles as they are escorted by adults to the court room. The children
27 usually arrive in the courtroom to the gasp of parents who were not prepared to see their
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1 child hobbled. The restraints then remain in place throughout the proceedings,
2 interfering with the child's ability to focus or sign documents. Even though the children
3 are informed they are presumed innocent, the bindings around their extremities sends a
4 different message. During adjudications, children sit with their feet and hands bound.
5 If they choose to testify they will shuffle their way to the witness stand, on full display
6 to the courtroom.
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8 The National Prevention Science Coalition to Improve Lives (NPSC), an
9 organization committed to assisting children and adolescents lead healthy, successful
10 lives by promoting the prevention of problems through scientifically validated measure
11 to improve the mental health of children and reduce risk, published a letter opposing
12 "the indiscriminate shackling of youth in juvenile courtrooms as this practice is harmful
13 to young people and likely to increase recidivism and inhibit rehabilitation." According
14 to the NPSC, indiscriminate shackling may inhibit youths' ability to successfully
15 rehabilitate their lives, putting the community at greater risk.
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18 While there may be legitimate occasions that require an adolescent to be
19 shackled during transportation and in the courtroom, those occasions should be
20 determined by the judiciary. The judge, having an interest in the security of his
21 courtroom and the welfare of the child, has the ability to weigh the concerns of
22 transportation or law enforcement and the rights and needs of the child. Children
23 appearing in court in leg irons and handcuffs should be the rare exception, not the norm.
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25 A Juvenile Court Rule prohibiting the shackling of children without independent
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1 decisions by a judge would ensure that all children in the state of Arizona are treated
2 fairly and afforded Due Process.

3 In the 18th century, Blackstone wrote that “it is laid down in our ancient books,
4 that, though under an indictment of the highest nature,” a defendant “must be brought to
5 the bar without irons, or any manner of shackles or bonds; unless there be evident
6 danger of an escape.” 4 W. Blackstone, Commentaries on the Laws of England 317
7 (1769). In *Deck v. Missouri*, the Supreme Court held the Fifth and Fourteenth
8 Amendments prohibit the use of physical restraints visible to the jury absent a trial court
9 determination. *Id.*, 544 U.S. 622, 625, 125 SCt. 2007 (2007) “The law has long
10 forbidden routine use of visible shackles during the guilt phase; it permits a State to
11 shackle a criminal defendant only in the presence of a special need.” *Id.* Although juries
12 are not present in juvenile court, children should still be afforded the presumption of
13 innocence that is inhibited by restraints.

14 In *State v. Chavez*, the Supreme Court of Arizona held that safety of a courtroom
15 is relegated to the court. 98 Ariz. 236, 403 P.2d 545 (1965). A judge is in the best
16 position to determine the safety needs of a court room. Juvenile probation and court
17 security should not create policies and procedures for the indiscriminate shackling of
18 children. The court, on an individual basis, should direct the need for restraining the
19 child. Currently, in some counties, juvenile probation has created arbitrary standards
20 mandating the shackling of children even if they present no danger to themselves or
21 others, their behavior in detention has been appropriate and the probation officer is
22 recommending that the child be released to his or her parents.

1 The goal of Juvenile Court is to rehabilitate youth, placing them in a better
2 position than before they entered the juvenile justice system. Psychologists around the
3 country and locally have opined that the placement of children in restraints has a
4 determinately, long lasting effect on the child's mental health. Many children in the
5 juvenile justice system have Post Traumatic Stress Disorder as the result of physical and
6 emotional abuse by family and their communities. Restraining these youth mirrors past
7 traumas, lending to the feelings of loss of control, powerlessness, betrayal, fear,
8 humiliation, and pain. These memories, and the overwhelming feelings that accompany
9 them, can last a lifetime for the child. Long after the child leaves the juvenile justice
10 system he or she will carry the scars of being shackled in front of his family and others.
11 Thus, before a child is subjected to the trauma of being shackled, the court should make
12 an independent decision about the need for restraints in the courthouse.
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16 At a hearing regarding the need for restraints, the child must be afforded counsel
17 to ensure that the court is provided all relevant information regarding current
18 circumstances and the child's demeanor. The child must be given an opportunity to
19 provide evidence of appropriate behavior and challenge information being presented to
20 the court. The court should only have a child placed in restraints if the child is currently
21 combative, a threat to others, or threatening to flee. Thus the security of the court room
22 will be maintained without detriment to children who pose no risk.
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25 When the court orders a child placed in restraints for a court proceeding, the least
26 restrictive restraints should be utilized to reduce trauma to the youth. If leg restraints
27 will prevent the child from fleeing, the child should not be placed in handcuffs or a
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1 belly chain. There may be times when restraints are required; however those times
2 should be a rare occasion.

3 The children of Arizona deserve to be treated with respect and receive Due
4 Process when involved in the juvenile justice system. Children gained Due Process
5 rights by the Supreme Court though *In re Gault*, an Arizona case. *Id.*, 387 U.S. 1, 87
6 S.Ct. 1428 (1967). Arizona needs to provide children the Due Process promised by *In re*
7 *Gault* by requiring an independent determination by the court that a child needs to be
8 restrained for safety concerns after a hearing where the child is represented by counsel.
9 A new Rule of Procedure for Juvenile Court would guarantee Due Process for all
10 children and not leave it to the policies of individual counties.

13 **Conclusion**

14 Children should not be indiscriminately shackled during transportation and juvenile
15 court proceedings. The adoption of a new Rule, Rules of Procedure for Juvenile Court,
16 would ensure children are not restrained without an independent determination by the
17 court.
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21 RESPECTFULLY SUBMITTED this 21st day of October, 2015.

22
23 /s/ Christina Phillis

24 Christina Phillis

25 On behalf of APDA
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1 Electronic copy filed with the Clerk of the
2 Supreme Court of Arizona this 21st day of
3 October, 2015,

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2 **Rule: Use of Restraints on Juveniles**

- 3 A. Children shall be free of mechanical restraints when appearing in Superior Court,
4 Juvenile Division, unless there are no less restrictive alternatives to mechanical
5 restraints that will prevent flight or physical harm of another person, including,
6 but not limited to, the presence of court personnel or law enforcement officers
7 and the court has made a judicial determination that:
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9 a. Child is displaying threatening or physically aggressive behavior towards
10 others or
11 b. Child is likely to flee
12 i. Child has expressed an intention to flee or
13 ii. Child has attempted to flee secure care in the last 3 months.
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15 B. The court shall provide the juvenile an opportunity to be heard through counsel
16 before the court orders the use of restraints. If restraints are ordered, the court
17 shall make written findings of fact in support of the order.
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19 C. Any restraints shall allow the child limited movement of the hands to read,
20 handle documents and write.
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22 D. Whenever the child is in the courthouse, the child should remain without
23 mechanical restraints to the greatest extent possible
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25 E. Mechanical restraints include handcuffs, leg irons, belly chains, zip ties,
26 straitjackets, and any device used to restrain movement of the arms, legs or torso.
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